

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SINGULAR COMPUTING LLC,)
)
Plaintiff) Civil Action
)
) No. 19-12551-FDS
vs.)
)
GOOGLE LLC,)
Defendant)

BEFORE: CHIEF JUDGE F. DENNIS SAYLOR, IV

STATUS CONFERENCE CONDUCTED BY ZOOM

John Joseph Moakley United States Courthouse
1 Courthouse Way
Boston, MA 02210

July 27, 2021
4:00 p.m.

Valerie A. O'Hara, FCRR, RPR
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Boston, MA 02210
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1 APPEARANCES:

2 For The Plaintiff:

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4 KEVIN GANNON, ESQ., One International Place, Boston,
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9 Kwun, Bhansali, Lazarus LLP, by ASIM M. BHANSALI, ESQ.,
10 and MICHAEL S. KWUN, ESQ., 555 Montgomery Street, Suite 750,
San Francisco, California 94111;

11 Wolf, Greenfield & Sacks, P.C., by NATHAN R. SPEED, ESQ.,
12 600 Atlantic Avenue, Boston, Massachusetts 02210.

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1 THE COURT: Good afternoon.

2 MR. KWUN: And also Michael Kwun from Kwun,
3 Bhansali, Lazarus for Google, your Honor.

4 THE COURT: Good afternoon. All right. This is a
5 status conference in this case. I have a number of motions
6 pending. Google has filed a motion to compel Number 244
7 and a motion for protective order, 249, and Singular has
8 filed a motion to compel inspecting, testing and source
9 code, which is 262. I think I'm going to refer all of
04:01PM 10 those to Magistrate Judge Cabell because I think they all
11 involve the scope of discovery.

12 266, which I think was filed a couple days ago was
13 a motion, I think it's by Singular, for leave to modify the
14 scheduling order to permit some additional time to take
15 depositions. Do I understand Google intends to oppose
16 that; is that right, Mr. Kamber?

17 MR. KAMBER: That's right, your Honor.

18 THE COURT: When do you think you could get an
19 opposition on file just so this isn't dangling too long?

04:02PM 20 MR. KAMBER: I would like to think we could get an
21 opposition on file by Friday or Monday.

22 THE COURT: All right. Why don't I give you to
23 Monday, the close of business East Coast time on Monday,
24 okay?

25 MR. KAMBER: Much appreciated.

1 THE COURT: Then I'll try to rule on that quickly
2 just so everyone knows the schedule going forward.

3 There's some a smattering of motions to seal,
4 which I will grant. Let me be a little more linear about
5 this. Hold on. 247, 256, and 265.

6 If I haven't made this clear, I'll do so now.
7 There's a tendency to overseal documents, including sealing
8 an entire document sometimes when there's a word or a
9 sentence that actually contains something private or
04:03PM 10 proprietary, and so I require when documents are filed
11 under seal that a redacted public version be filed as well
12 with the minimum redactions necessary to accomplish the
13 goal of protecting whatever it is you want to protect, if
14 there's any such sealing as, you know, later subject to
15 unsealing for good cause shown.

16 The way this tends to work, of course, you're
17 doing it in realtime and you want to get something on file
18 to meet a deadline or whatever. I'm going to ask the
19 parties to look at what has been filed under seal, and I'll
04:03PM 20 give you 14 days to file a redacted online version.

21 This also tends to be a client-driven exercise. I
22 know it's hard for anyone, any lawyer to say no to the
23 client, but I do expect that you'll at least push back
24 somewhat. With rare exceptions, there's no need for pages
25 and pages and pages of things that are blacked out. They

1 tend to be specific things, financial information or design
2 elements or whatever it is that is generally proprietary,
3 but I'll leave it with that sort of general observation,
4 and, again, without trying to micromanage this, I'll give
5 you 14 days to file a redacted version of anything that was
6 filed pursuant to those motions to seal on the public
7 document.

8 All right. I think it makes sense for me to
9 schedule another status conference just to, again, as we're
04:05PM 10 trying to wrap up discovery in some form or another. I
11 don't know, of course, whether there's any objections to
12 magistrate judge orders, and there may be some continuing
13 things that flow out of discovery, but, otherwise, where
14 are we, and is there anything we should be discussing?
15 Mr. Hayes.

16 MR. HAYES: No, your Honor, other than I thought
17 we would discuss the two deposition notices, but you're
18 just going to rule on them on the papers, so that's fine
19 unless you want to hear something about it.

04:05PM 20 THE COURT: Well, I mean, I guess I'll say to
21 Google, I'm not sure I see much harm in extending the
22 deadline here given that we're going to stay the rest of
23 the case, but I'll hear what you have to say. You know, if
24 you think it is generally oppressive or problematic, I can
25 let you make your case, but, again, I think the basic plan

1 here is barring further developments once that discovery is
2 closed that we're going to be suspended here for at least
3 some period of time, hopefully not too long, but whatever
4 you have to say, I'll read it, okay.

5 MR. KAMBER: Thank you, your Honor.

6 THE COURT: All right. Mr. Kamber or anyone else,
7 anything from -- Mr. Hayes.

8 MR. HAYES: The only thing else, I think we talked
9 about it last time, and I bring it up, but it's obviously
04:06PM 10 your decision, the Markman decision, to rule on it. We, I
11 mean, my preference is get it done now as opposed to nine
12 months from now trying to redo it.

13 I mean, I think most everything should be sort of
14 briefed, rebriefed, argued and fresh to get it over, and
15 our position is, if you could, we would like to see a
16 ruling.

17 One reason we like to see a ruling on this is
18 because some of these motions, they've filed a bunch of
19 motions, motions to compel with the magistrate that we're
04:07PM 20 supposed to answer interrogatories, and one of objections
21 is we haven't had a claim construction, and if we had one,
22 we could move it along.

23 And the other point, I mean, frankly, is Singular
24 spent over 150k briefing and rebriefing it, arguing it and
25 the rest, and my client says to me, well, what's the story?

1 And I said, well, you know, welcome to litigation, but
2 nothing ever gets done.

3 THE COURT: Not quite that bad, close, but not
4 quite that bad.

5 MR. HAYES: I understand that, and it's
6 particularly true as we see it with this 112 argument on
7 statistical mean, and we've all gone over that, et cetera.
8 I mean, I think some of it is ripe to be decided, I'm not
9 pushing you to do it, but, if you could, we would prefer
04:08PM 10 that you would.

11 THE COURT: Okay. Yes. I very much understand
12 the issue, and I also understand that there's a circular
13 quality, you know, to some of this stuff. As I'm sure I
14 don't need to tell you this, but, you know, the claim
15 construction comes out as some way, maybe it affects
16 discovery or other things or, you know, claims are amended,
17 all kinds of thing happen as a result or people try to
18 assert new theories or seek new discovery. I can't make
19 that perfect.

04:09PM 20 Having decided that I think it makes sense to wait
21 and see what, if anything, happens in Washington with this,
22 I think I'm going to stick with my plan, completing fact
23 discovery. I am used to reviewing motions that are both
24 fresh and stale, it's just part of the job description. I
25 don't think we need another round of rebriefing or

1 rehearing, you know, I suppose if I drop dead and other
2 some other Judge gets it, that may be a problem, but I
3 think I can reconstruct this.

4 MR. HAYES: That's fine, Judge. They asked me, my
5 client asked me to ask you, and --

6 THE COURT: I understand. And I'm sympathetic,
7 I'm sympathetic to all clients. This whole process is more
8 cumbersome and complicated than it needs to be, and there's
9 only one of me, which is part of the problem, but, in any
04:10PM 10 event, that's my plan. I'm going to stick with it, but I
11 do think it makes sense, as I said, to get fact discovery
12 wrapped up as best we can recognizing that some issues, you
13 know, may bubble back to the surface if we're back here and
14 once we've done claim construction.

15 MR. HAYES: Thank you, Judge. Nothing else then.
16 That's the only comment I have.

17 THE COURT: All right. Mr. Kamber or anyone else
18 from the defense?

19 MR. KAMBER: Just three quick updates, your Honor.
04:10PM 20 We are very close to fact discovery on everything else.
21 There was one deposition that happened today that was kind
22 of a carryover, and there's one deposition that's happening
23 tomorrow. That deposition tomorrow sort of interrelates
24 with my second point, which is that depending on how that
25 plays out, it might moot the issues in Docket Number 249,

1 our motion for a protective order.

2 THE COURT: That's the one on the 30(b)(6) topics?

3 MR. KAMBER: That's correct, yes. So we'll see
4 how that plays out. As for the motion to compel, our
5 motion 244, we can brief this issue and we have briefed it
6 for Judge Cabell.

7 We don't think that we need a claim construction
8 ruling for that. It relates to one RFA, and that RFA
9 doesn't depend on any of the three issues that we argued
04:11PM 10 and briefed before the Court, but that's, again, I think an
11 issue for Judge Cabell to look at, and otherwise we'll
12 provide our filings and responses on the pending motions.

13 THE COURT: Okay. All right. Why don't we circle
14 back in two weeks. I'm out that following week, and I
15 don't want to let this thing go too long, whatever headway
16 we can make. How about Tuesday, August 10th at 4:00
17 eastern time, will that work?

18 MR. HAYES: It's good for us, your Honor, the
19 plaintiffs.

04:12PM 20 MR. KAMBER: Let me confirm that, but I think that
21 should be fine, your Honor. That would be fine, your
22 Honor.

23 THE COURT: Okay. All right. Unless there's
24 anything else then, we'll see where we are in two weeks.
25 Again, just to reiterate, I would like to wrap up fact

1 discovery as best we can knowing that some things may have
2 to be revisited, and at least my presumption is it's not
3 the end of this world if this thing dribbles on for a
4 couple more days or weeks as things are being wrapped up or
5 new information is being provided, but I may be missing
6 something, and I'll read whatever it is you have to say on
7 that point. Okay, thanks, everybody and we'll see you in
8 two weeks.

9 MR. HAYES: Thank you, Judge.

04:13PM 10 MR. KAMBER: Thank you, your Honor.

11 (Whereupon, the hearing was adjourned at
12 4:12 p.m.)
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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I do hereby certify that the foregoing transcript,
Pages 1 through 12 inclusive, was recorded by me
stenographically at the time and place aforesaid in Civil
Action No. 19-12551-FDS, SINGULAR COMPUTING LLC vs. GOOGLE LLC
and thereafter by me reduced to typewriting and is a true and
accurate record of the proceedings.

Dated July 28, 2021.

s/s Valerie A. O'Hara

VALERIE A. O'HARA

OFFICIAL COURT REPORTER